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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 UNITED STATES OF AMERICA,) No. CR-13-00636 LHK
12)
Plaintiff,) JOINT STATUS CONFERENCE
13) STATEMENT
vs.)
14)
ANTHONY BARREIRO, et al.,)
15)
Defendants.)
16)

17 Defendant Anthony Barreiro, by and through Assistant Federal Public Defender Varell L.
18 Fuller; defendant Ernest Ray Parker, by and through counsel Peter A. Leeming; and the United
19 States, by and through Assistant United States Attorney Timothy J. Lucey, hereby submit this
20 Joint Status Conference Statement in anticipation of the status conference scheduled for
21 December 10, 2014, to update the Court regarding the developments and progress in this case.

22 The defendants were indicted on September 25, 2013, but the indictments were sealed
23 until the defendants were arrested in Texas on January 10, 2014. They were arrested without
24 incident, and made their initial appearances in the Northern District of Texas in removal
25 proceedings. They were ordered released, made their initial appearances in the Northern
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1 District of California on January 16, 2014, and were arraigned on February 11, 2014. At that
2 time, the Federal Defender was appointed to represent Mr. Barreiro, and Mr. Parker was
3 represented by Mr. Bretton C. Gerard. To accommodate Mr. Gerard, who resides in Texas, the
4 parties had their initial district court appearance on February 12, 2014. During that court
5 appearance, the United States advised the Court that it anticipated providing discovery, and
6 defense counsel advised of their intention to file a notice of related cases. The Court set a further
7 status date for April 1, 2014, and excluded time.

8 On February 13, 2014, the defendants filed a notice of related cases requesting that this
9 matter be deemed related to civil case *Hoskins v. Gaylord, et al*, No. 13-cv-04320-JST. On
10 February 14, 2014, the government filed a statement in opposition to the defendants' notice. The
11 Honorable Jon S. Tigar issued an order deeming the matters not related on February 23, 2014.

12 On February 24, 2014, the United States provided defense counsel with 1,497 pages of
13 discovery. The United States declined at that time to provide copies of any witness statements,
14 which it deemed to be *Jenks*. Counsel for Mr. Barreiro began diligently reviewing and
15 organizing the material, and the Federal Defender has since created a database of those materials.
16 By stipulation of the parties, the previously set April 1, 2014, status date was continued to May
17 21, 2014, and time was excluded. On May 5, 2014, however, Mr. Gerard moved to withdraw as
18 counsel for Mr. Parker. On May 21, 2014, the parties appeared before the Court for a status
19 conference and the matter was continued to June 11, 2014, due in part due to Mr. Gerard's
20 pending motion to withdraw. At a hearing on June 9, 2014, before Magistrate Judge Cousins,
21 Mr. Gerard withdrew and Peter Leeming was retained as new counsel for Mr. Parker.

22 On June 10, 2014, the Court continued the matter to August 27, 2014, by stipulation of
23 the parties, with an exclusion of time.

24 Mr. Gerard, who had for a time acted as counsel for both defendants, refused to provide a
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1 copy of the client file because of a fee dispute with Mr. Parker.¹ On June 13, 2014, counsel for
2 the defendants filed a joint motion to compel Mr. Gerard to produce the client file.

3 At a joint defense meeting on July 10, 2014, counsel for Mr. Barreiro received what Mr.
4 Gerard purported to be the client file – three large unorganized boxes of documents. It was later
5 determined the boxes consisted of 11,586 pages of documents. They were Bates stamped and
6 indexed, and a database of the materials was created. The defense investigation and preparation
7 has also involved the gathering and review of no less than thirteen bankruptcy proceedings, four
8 separate civil suits related to the collapse of ArtLoan, and approximately 1,566 pages of
9 depositions, exclusive of supporting exhibits. The defense investigation and review of the
10 related civil proceedings is ongoing. These documents have not been provided, at this time, to
11 the Government.

12 Counsel for Mr. Parker and Mr. Barreiro have diligently reviewed the 1,497 initial
13 discovery production and have had several discussions with government counsel about the
14 evidence in relation to the alleged conduct. Upon reviewing the initial discovery, both defense
15 counsel believed it was inconsistent with the alleged conduct.

16 In the course of discussions between the parties in November of 2014 regarding the
17 nature of the allegations and the defense discovery requests, the government realized that
18 approximately an additional 14,000 pages of discovery, which the government had transmitted in
19 May of 2014, had yet to be received by the defense.

20 On November 17, 2014, in an effort to clarify this issue, counsel for Mr. Barreiro
21 submitted a letter to the government requesting that the United States identify by Bates page the
22 items referenced in the indictment. Also on November 17, 2014, counsel for Mr. Barreiro
23 provided the government with a supplemental discovery request for the production of the witness
24 statements of 25 individuals and organizations counsel identified from the initial discovery

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26 ¹That fee dispute and Mr Gerard's actions is presently the subject of on going State Bar
Proceedings in Texas.

1 production as possible ArtLoan investors

2 On November 19, 2014, the parties met at the United States Attorney's office to meet and
3 confer regarding the outstanding discovery issues as well as the substantive allegations of the
4 indictment and supporting evidence. At that time, the government re-produced its May 2014
5 production of approximately 14,000 bates pages of discovery as well as a further production of
6 approximately 3,000 bates pages of additional discovery in response to discovery letters from the
7 defense earlier that week.

8 On November 20, 2014, the United States, though not required to do so, provided an
9 index of the materials to assist defense counsel in their review and analysis of these documents
10 along with the additional set of approximately 3,000 further bates-stamped documents. The
11 discovery produced is voluminous and contains crucial information, including the previously
12 requested witness interviews, audio recordings, financial records, transcripts and court records
13 from civil proceedings, and a considerable number of ArtLoan email communications.

14 The defense review and preparation to date involves no less than 40,000 bates pages of
15 materials, which includes the 20,000 bates pages received the week of November 17, 2014.

16 The defense review and organization of those materials is ongoing. Additionally, the
17 defense reasonably believes and anticipates, based on a preliminary review of those materials,
18 that there will be a need for supplemental discovery requests, the preparation of pretrial
19 subpoenas duces tecum, and the need to conduct witness interviews. In an effort to expedite
20 those witness interviews, counsel for Mr. Barreiro has retained a second investigator, as the San
21 Jose Division of the Federal Defender at present has only one Investigator.

22 The parties are in agreement that, because of the unanticipated delays in the receipt of
23 certain discovery, and the voluminous nature of materials involved, both the United States and
24 the defense would benefit from the setting of a further status conference up to 60 days out from
25 the December 10, 2014, status conference.

26 For the above-going reasons, the parties will respectfully requests that, at the status

1 conference on December 10, 2014, the Court set a status conference on a date to be determined
2 in 2015, and that the case be declared complex, within the meaning of 18 U.S.C. §
3 3161(7)(B)(ii).

4 The parties are also in agreement and are prepared to further stipulate, at the December
5 10 status conference, that an exclusion of time is necessary and appropriate based on defense
6 counsels need to effectively prepare as well as continuity of counsel. With respect to the basis
7 for a exclusion of time based on continuity of counsel, counsel for Mr. Barreiro's is unavailable
8 the week of December 22, 2014 due to previously scheduled holiday travel.

9 Dated: December 8, 2014

10 Respectfully submitted,

11 STEVEN G. KALAR
12 Federal Public Defender

13 _____/s/_____
14 VARELL L. FULLER
15 Assistant Federal Public Defender
16 Counsel for defendant Anthony Barreiro

17 _____/s/_____
18 PETER A. LEEMING
19 Counsel for defendant Ernest Ray Parker

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21 TIMOTHY J. LUCEY
22 Assistant United States Attorney
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